

HOWARD M. GARFIELD State Bar #43369
IRENE K. YESOWITCH State Bar #111575
LONG & LEVIT LLP
465 California Street, Suite 500
San Francisco, CA 94104
TEL: (415) 397-2222 FAX: (415) 397-6392

Attorneys for Defendants
BAY STREET CORPORATION dba RED JACK
SALOON (sued erroneously herein as Red Jack
Saloon);
NORMA PALADINI

ORIGINAL FILED

JUN 16 2008

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JCS

LES JANKEY and DISABILITY RIGHTS
ENFORCEMENT, EDUCATION,
SERVICES: HELPING YOU HELP
OTHERS,

Plaintiffs,

vs.

RED JACK SALOON; NORMA
PALADINI; and DOES 1-20, inclusive,

Defendants.

CV 08

2978

NOTICE OF REMOVAL OF ACTION;
UNDER 28 U.S.C. SEC. 1441(b) (FEDERAL
QUESTION)

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that defendants Bay Street Corporation dba Red Jack Saloon
(sued erroneously herein as "RED JACK SALOON") and Norma Paladini (collectively "Red
Jack Saloon") hereby remove to this Court the state action described below.

1. On April 14, 2008, an action was commenced in the Superior Court of the State of
California in and for the City and County of San Francisco, entitled Les Jankey and Disability
Rights Enforcement, Education, Services: Helping You Help Others v. Red Jack Saloon; Norma
Paladini; and Does 1-20, Inclusive, Defendants, as case number CGC-08-474253, a true and
correct copy of which is attached as Exhibit A.

///

2. The first date upon which defendants Red Jack Saloon received a copy of the Complaint was May 16, 2008, when defendants Red Jack Saloon were served with a copy of the Complaint and a Summons from the State Court. Defendants did not receive any initial pleadings, through service or otherwise, prior to receipt of the Summons and Complaint on May 16, 2008.

3. On June 16, 2008, Defendants filed their Answer in State Court, a true and correct copy of which is attached as Exhibit B.

4. This Notice of Removal has been filed with the Court within 30 days of receipt of Plaintiff's Summons and Complaint. It is therefore timely filed in accordance with 28 U.S.C. section 1446.

5. On information and belief, no other defendants have been served with the Summons and Complaint.

JURISDICTION

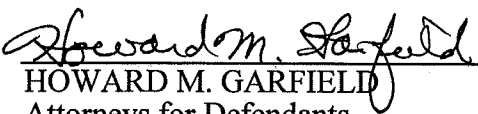
6. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. section 1331, and is one that may be removed to this Court by defendants pursuant to the provisions of 28 U.S.C. section 1441(b), in that it arises under a federal statute, the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, *et seq.*).

INTRADICTION ASSIGNMENT

7. Pursuant to Civil L.R. 3-5(b) and Civil L.R. 3-2(c) and (d), this case should be assigned to the San Francisco Division, as all of the alleged events or omissions that give rise to the claim occurred in San Francisco.

Dated: June 16, 2008

LONG & LEVIT LLP

By 
 HOWARD M. GARFIELD
 Attorneys for Defendants
 BAY STREET CORPORATION dba
 RED JACK SALOON (sued
 erroneously herein as Red Jack Saloon)
 and NORMA PALADINI

DOCSVZ9901-500\550188.V1

EXHIBIT A

ORIGINAL

1 THOMAS E. FRANKOVICH (State Bar No. 074414)
 2 THOMAS E. FRANKOVICH,

3 *A Professional Law Corporation*
 4 2806 Van Ness Avenue

5 San Francisco, CA 94109

6 Telephone: 415/674-8600

7 Facsimile: 415/674-9900

8 Attorneys for Plaintiffs

9 LES JANKEY

10 and DISABILITY RIGHTS

11 ENFORCEMENT, EDUCATION,

12 SERVICES: HELPING YOU

13 HELP OTHERS

FILED
 Superior Court of California
 County of San Francisco

APR 14 2008

GORDON ROBERT, Clerk

CHRISTINA E. BAUTISTA

Deputy Clerk

SEP 12 2008 - 9⁰⁰ AM

DEPARTMENT 211
 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR SAN FRANCISCO COUNTY

14 LES JANKEY, an individual; and
 15 DISABILITY RIGHTS ENFORCEMENT,
 16 EDUCATION, SERVICES: HELPING
 17 YOU HELP OTHERS, a California public
 18 benefit corporation,

19 Plaintiffs,

20 v.

21 RED JACK SALOON; NORMA
 22 PALADINI; and DOES 1-20, inclusive,

23 Defendants.

CASE NO.
Civil Rights

CGC - 08 - 17 - 111

COMPLAINT FOR INJUNCTIVE RELIEF
 AND DAMAGES:

1st CAUSE OF ACTION: For Denial of Access
 by a Public Accommodation in Violation of the
 Americans with Disabilities Act of 1990 (42
 U.S.C. §12101, *et seq.*)

2nd CAUSE OF ACTION: For Denial of Full
 and Equal Access in Violation of California
 Civil Code §§54, 54.1 and 54.3

3rd CAUSE OF ACTION: For Denial of
 Accessible Sanitary Facilities in Violation of
 California Health & Safety Code §19955, *et seq.*

4th CAUSE OF ACTION: For Denial of
 Access to Full and Equal Accommodations,
 Advantages, Facilities, Privileges and/or
 Services in Violation of California Civil Code
 §51, *et seq.* (The Unruh Civil Rights Act)

DEMAND FOR JURY

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

ORIGINAL

1 THOMAS E. FRANKOVICH (State Bar No. 074414)
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 9 LES JANKEY
 10 and DISABILITY RIGHTS
 11 ENFORCEMENT, EDUCATION,
 12 SERVICES: HELPING YOU
 13 HELP OTHERS

ENDORSED
 FILED
 Superior Court of California
 County of San Francisco

APR 14 2008
 APR 14 2008

CASE MANAGEMENT CONFERENCE SET

SEP 12 2008 - 9:30 AM

GORDON PARK-LI, Clerk
 CHRISTINA E. BAUTISTA
 Deputy Clerk

DEPARTMENT 211

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR SAN FRANCISCO COUNTY**

12 LES JANKEY, an individual; and
 13 DISABILITY RIGHTS ENFORCEMENT,
 14 EDUCATION, SERVICES: HELPING
 15 YOU HELP OTHERS, a California public
 16 benefit corporation,

Plaintiffs,

v.

17 RED JACK SALOON; NORMA
 18 PALADINI; and DOES 1-20, inclusive,
 19 Defendants.

CASE NO. CGC - 08 - 474253
Civil Rights

COMPLAINT FOR INJUNCTIVE RELIEF
 AND DAMAGES:

1st CAUSE OF ACTION: For Denial of Access
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DEMAND FOR JURY

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

7.

SERVICE LIST
SUPERIOR COURT OF THE STATE OF CALIFORNIA IN
THE CITY & COUNTY OF SAN FRANCISCO

Les Jankey, et. al, v. Red Jack Saloon, et. al
Case No.

Norma Paladini
443 22nd Ave
San Mateo, CA 94403

1 Plaintiffs LES JANKEY, an individual; and DISABILITY RIGHTS, ENFORCEMENT,
 2 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit
 3 corporation (hereinafter sometimes referred to as "DREES"), complain of defendants NORMA
 4 PALADINI; and DOES 1-20, inclusive, and allege as follows:

5 **INTRODUCTION:**

6 1. This is a civil rights action for discrimination against persons with physical
 7 disabilities, of which class plaintiff LES JANKEY and the membership of DREES are members,
 8 for failure to remove architectural barriers structural in nature at defendants' RED JACK
 9 SALOON, a place of public accommodation, thereby discriminatorily denying plaintiffs and the
 10 class of other similarly situated persons with physical disabilities access to, the full and equal
 11 enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services, and
 12 accommodations thereof. Plaintiffs seek injunctive relief and damages pursuant to the
 13 Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code §§51,
 14 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et seq.*

15 2. Plaintiff LES JANKEY is a person with physical disabilities who, on or about
 16 October 27, 2007, October 28, 2007, February 9, 2008, February 10, 2008 and March 21, 2008,
 17 was an invitee, guest, patron, customer at defendants' RED JACK SALOON, in the City of San
 18 Francisco, California. At said time and place, defendants failed to provide proper legal access to
 19 the RED JACK SALOON, which is a "public accommodation" and/or a "public facility"
 20 including, but not limited to entrance, path of travel to the restrooms and patio, men's restroom
 21 and women's restroom. The denial of access was in violation of both federal and California legal
 22 requirements, and plaintiff LES JANKEY suffered violation of his civil rights to full and equal
 23 access, and was embarrassed and humiliated.

24 **JURISDICTION AND VENUE:**

25 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to California
 26 Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et seq.*,
 27 including §19959 and Title 24, California Building Standards Code. Further, a violation of the
 28

1 Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*, is a violation of Civil Code
 2 §51 & 54.

3 4. **Venue:** Venue is proper in this court and is founded on the facts that the real
 4 property which is the subject of this action is located at/near 131 Bay Street, in the City and
 5 County of San Francisco, State of California, and that plaintiffs' causes of action arose in this
 6 county.

7 **PARTIES:**

8 5. Plaintiff LES JANKEY is a "physically handicapped person", a "physically
 9 disabled person", and a "person with physical disabilities" (hereinafter the terms "physically
 10 disabled", "physically handicapped" and "person with physical disabilities" are used
 11 interchangeably, as these words have similar or identical common usage and legal meaning, but
 12 the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically
 13 handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54, 54.1 and 55, and other
 14 statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff
 15 LES JANKEY is a "person with physical disabilities", as defined by all applicable California and
 16 United States laws. Plaintiff has a congenital deformity of both lower extremities. Plaintiff LES
 17 JANKEY requires the use of a wheelchair to travel about in public. Consequently, plaintiff LES
 18 JANKEY is a member of that portion of the public whose rights are protected by the provisions
 19 of Health & Safety Code §19955, *et seq.* (entitled "Access to Public Accommodations by
 20 Physically Handicapped Persons") and the protections of the Unruh Civil Rights Act, Civil Code
 21 §§51 and 51.5 the Disabled Persons Act, Civil Code §54, and the Americans with Disabilities
 22 Act, 42 U.S.C. §12101, *et seq.*

23 6. Plaintiff DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES:
 24 HELPING YOU HELP OTHERS ("DREES") is a nonprofit (501(c)(3)) organization that works
 25 with persons with disabilities to empower them to be independent in American society. DREES
 26 accomplishes its goals and purposes through education on disability issues, enforcement of the
 27 rights of persons with disabilities, and the provision of services to persons with disabilities, the
 28 general public, public agencies and the private business sector. DREES brings this action on

1 behalf of its members, many of whom are persons with physical disabilities and whom have
 2 standing in their right to bring this action.

3 7. That members of DREES, like plaintiff LES JANKEY, will or have been guests
 4 and invitees at the subject RED JACK SALOON, and that the interests of plaintiff DREES in
 5 removing architectural barriers at the subject Saloon advance the purposes of DREES to assure
 6 that all public accommodations, including the subject Saloon, are accessible to independent use
 7 by mobility-impaired persons.

8 8. Defendants NORMA PALADINI; and DOES 1-20, inclusive, (hereinafter
 9 alternatively collectively referred to as "defendants") are the owners and operators, lessors and/or
 10 lessees, or agents of the owners, lessors and/or lessees, of the public accommodation known as
 11 the RED JACK SALOON, located at/near 131 Bay Street, San Francisco, California, or of the
 12 building and/or buildings which constitute said public accommodation.

13 9. At all times relevant to this complaint, defendants NORMA PALADINI; and
 14 DOES 1-20, inclusive, own and operate in joint venture the subject RED JACK SALOON as a
 15 public accommodation. This business is open to the general public and conducts business
 16 therein. The business is a "public accommodation" or "public facility" subject to the
 17 requirements of California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety code §19955,
 18 *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

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1 10. At all times relevant to this complaint, defendants NORMA PALADINI; and
 2 DOES 1-20, inclusive, are jointly and severally responsible to identify and remove architectural
 3 barriers at the subject RED JACK SALOON pursuant to Code of Federal Regulations title 28,
 4 section 36.201(b), which states in pertinent part:

5 § 36.201 General

6 (b) *Landlord and tenant responsibilities.* Both the landlord
 7 who owns the building that houses a place of public
 8 accommodation and the tenant who owns or operates the place of
 9 public accommodation are public accommodations subject to the
 requirements of this part. As between the parties, allocation of
 responsibility for complying with the obligations of this part may
 be determined by lease or other contract.

10 28 CFR §36.201(b)

11 **PRELIMINARY FACTUAL ALLEGATIONS:**

12 11. The RED JACK SALOON, is a Saloon, located at/near 131 Bay Street, San
 13 Francisco, California. The RED JACK SALOON, its entrance, path of travel to the restrooms
 14 and patio, men's restroom, women's restroom, and its other facilities are each a "place of public
 15 accommodation or facility" subject to the barrier removal requirements of the Americans with
 16 Disabilities Act. On information and belief, each such facility has, since July 1, 1970, undergone
 17 "alterations, structural repairs and additions", each of which has subjected the RED JACK
 18 SALOON and each of its facilities, its entrance, path of travel to the restrooms and patio, men's
 19 restroom and women's restroom to disability access requirements per the Americans with
 20 Disabilities Act Accessibility Guidelines (ADAAG), and Title 24 of the California Code of
 21 regulations (Title 24).

22 12. At all times stated herein, plaintiff LES JANKEY was a member of DREES.

23 13. At all times referred to herein and continuing to the present time, defendants, and
 24 each of them, advertised, publicized and held out the RED JACK SALOON as being
 25 handicapped accessible and handicapped usable.

26 14. On or about October 27, 2007, October 28, 2007, February 9, 2008, February 10,
 27 2008 and March 21, 2008, plaintiff LES JANKEY was an invitee and guest at the subject RED
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1 JACK SALOON, with his friend Craig Yates, for purposes of attending the Halloween party at
2 the RED JACK SALOON.

3 15. On or about October 27, 2007, neither plaintiff LES JANKEY or plaintiff's
4 friend, Craig Yates could enter the RED JACK SALOON due to a step at the entrance.

5 16. On or about October 28, 2007, the day the Red Sox won the World Series game,
6 plaintiff LES JANKEY and his friend, Craig Yates returned to the Saloon. This time, patrons
7 offered to lift them, but because plaintiffs' friend Craig Yates was in a power chair, they
8 declined.

9 17. On or about December 19, 2007, plaintiff LES JANKEY wrote the owner of the
10 building and the manager of RED JACK SALOON about the access problem. Plaintiff LES
11 JANKEY never received a response.

12 18. On or about February 5, 2008, plaintiff LES JANKEY again, wrote the owner
13 of the building and the manager of the RED JACK SALOON, as a follow up letter. Plaintiff
14 LES JANKEY did not receive a response.

15 19. On or about February 9, 2008, plaintiff returned to the RED JACK SALOON. ✓
16 Plaintiff LES JANKEY could not independently enter onto the step. The step still posed a
17 barrier. Plaintiff LES JANKEY needed assistance to enter.

18 20. At said time and place, plaintiff LES JANKEY discovered that there was no path
19 of travel to the outside patio or to the restrooms. The make shift ramp was too steep.

20 21. The next night, on or about February 10, 2008, plaintiff LES JANKEY returned
21 to the RED JACK SALOON. Needless to say, plaintiff LES JANKEY encountered all of the
22 same barriers as in the past three (3) visits.

23 22. On information and belief, plaintiff LES JANKEY alleges that the men's and
24 women's restrooms are not accessible within the readily achievable standard.

25 23. On or about, February 9 and 10, 2008, plaintiff LES JANKEY had conversations
26 with the bartender. Wherein, plaintiff LES JANKEY suggested ramping into the RED JACK
27 SALOON. The bartender indicated that the suggestion would be passed on to the owner. ✓
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1 24. On or about March 21, 2008, plaintiff LES JANKEY returned to the RED JACK
2 SALOON. A step still existed at the entrance of said restaurant.

3 25. At said time and place, plaintiff LES JANKEY knocked on the window with his
4 keys and a male patron came out and helped lift the plaintiff in his wheelchair over the step.

5 26. At said time and place, plaintiff LES JANKEY consumed beverage(s) and needed
6 to use a restroom. It was not accessible.

7 27. At said time and place, plaintiff LES JANKEY asked the same male patron to
8 assist him out of the bar. Plaintiff LES JANKEY was dropped and jostled in his chair as his
9 weight had a "thub" affect going off the step.

10 28. At said time and place, plaintiff LES JANKEY was returning to his vehicle and a
11 blonde woman came down the stairs from the unit above the bar. She in substance, asked
12 plaintiff LES JANKEY, if he was the individual writing the letters. Plaintiff responded, "yes."
13 She indicated that she had an aluminum ramp in her apartment and if they knew he was coming it
14 would be provided. Plaintiff LES JANKEY and this woman who indicated she only owned and
15 operated the bar discussed a bell, buzzer, portable ramp and so on. This woman said that she
16 discussed plaintiff's request with the building owner, a Ninety-two (92) year old woman who has
17 owned the bar since 1943, and that this building owner said she will not fix the entrance.
18 Plaintiff LES JANKEY proceeded to have dinner with this woman.

19 29. Therefore, at said time(s) and place, plaintiff LES JANKEY, a person with a
20 disability, encountered the following inaccessible elements of the subject RED JACK SALOON
21 which constituted architectural barriers and a denial of the proper and legally-required access to a
22 public accommodation to persons with physical disabilities including, but not limited to:

- 23 a. lack of an accessible entrance;
- 24 b. lack of a handicapped-accessible women's public restroom;
- 25 c. lack of a handicapped-accessible men's public restroom;
- 26 d. lack of an accessible bar;
- 27 e. On personal knowledge, information and belief, other public facilities and
28 elements too numerous to list were improperly inaccessible for use by
persons with physical disabilities.

1 30. At all times stated herein, the existence of architectural barriers at defendants'
2 place of public accommodation evidenced "actual notice" of defendants' intent not to comply
3 with the Americans with Disabilities Act of 1990 either then, now or in the future.

4 31. On or about December 19, 2007 and February 5, 2008, defendant(s) were sent
5 four (4) letters by or on behalf of plaintiff LES JANKEY advising of the existence of
6 architectural barriers, requesting a response within 14 days and requesting remedial measures be
7 undertaken within 90 days or an explanation of why the time limit set could not be met and/or
8 extenuating circumstances. Said letters are attached hereto collectively as exhibit "A" and
9 incorporated by reference as though fully set forth herein. Defendants' failure to respond
10 evidenced an intent not to seek or engage in an early and reasonable resolution of the matter.

11 32. At all times stated herein, defendants, and each of them, did not act as reasonable
12 and prudent landlord/tenant and were "negligent per se" or at a minimum negligent for not
13 removing architectural barriers that would foreseeably prevent plaintiff LES JANKEY from
14 receiving the same goods and services as able bodied people and some of which may and did
15 pose a threat of harm and/or personal injury to people with disabilities. Therefore as a legal
16 result of defendants breach of duty to remove those barriers encountered by plaintiff, plaintiff
17 suffered bodily injury on March 21, 2008, including, but not limited to, fatigue, stress, strain and
18 pain in wheeling and attempting to and/or transferring up, on, down, to, over, around and through
19 architectural barriers. Specifically, as a legal result of defendants negligence in the design,
20 construction and maintenance of the existing step, plaintiff LES JANKEY suffered injury to his
21 back and buttocks while being dropped and jostled in his wheelchair which was rolled off the
22 step.

23 33. As a legal result of defendants NORMA PALADINI; and DOES 1-20, inclusive's
24 failure to act as a reasonable and prudent public accommodation in identifying, removing or
25 creating architectural barriers, policies, practices and procedures that denied access to plaintiffs
26 and other persons with disabilities, plaintiffs suffered the damages as alleged herein.

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1 34. As a further legal result of the actions and failure to act of defendants, and as a
2 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
3 herein, plaintiffs were denied their civil rights to full and equal access to public facilities.
4 Plaintiff LES JANKEY suffered a loss of his civil rights and his rights as a person with physical
5 disabilities to full and equal access to public facilities.

6 35. Further, plaintiff LES JANKEY suffered emotional distress, mental distress,
7 mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation,
8 embarrassment, anger, disappointment and worry, expectedly and naturally associated with a
9 person with physical disabilities being denied access, all to his damages as prayed hereinafter in
10 an amount within the jurisdiction of this court. No claim is being made for mental and emotional
11 distress over and above that usually associated with the discrimination and physical injuries
12 claimed, and no expert testimony regarding this usual mental and emotional distress will be
13 presented at trial in support of the claim for damages.

14 36. Defendants', and each of their, failure to remove the architectural barriers
15 complained of herein created, at the time of plaintiff LES JANKEY's first visit to said public
16 accommodation, and continues to create continuous and repeated exposure to substantially the
17 same general harmful conditions which caused plaintiff LES JANKEY harm as stated herein.

18 37. Plaintiff LES JANKEY and the membership of DREES were denied their rights to
19 equal access to a public facility by defendants NORMA PALADINI; and DOES 1-20, inclusive,
20 because defendants NORMA PALADINI; and DOES 1-20, inclusive, maintained a Saloon
21 without access for persons with physical disabilities to its facilities, including but not limited to
22 the entrance, path of travel to the restrooms and patio, men's restroom, women's restrooms and
23 other public areas as stated herein, and continue to the date of filing this complaint to deny equal
24 access to plaintiff and other persons with physical disabilities in these and other ways.

25 38. On information and belief, construction alterations carried out by defendants have
26 also triggered access requirements under both California law and the Americans with Disabilities
27 Act of 1990.

1 39. Plaintiffs, as described hereinbelow, seek injunctive relief to require the RED
 2 JACK SALOON to be made accessible to meet the requirements of both California law and the
 3 Americans with Disabilities Act of 1990, whichever is more restrictive, so long as defendants
 4 operate the Saloon as a public facility.

5 40. Plaintiffs seek damages for violation of their civil rights on October 27, 2007,
 6 October 28, 2007, February 9, 2008, February 10, 2008 and March 21, 2008 and they seek
 7 statutory damages of not less than \$4,000, pursuant to Civil Code §52(a) or alternatively \$1000
 8 pursuant to Civil Code §54.3, for each day after his visit that the trier of fact (court/jury)
 9 determines was the date that some or all remedial work should have been completed under the
 10 standard that the landlord and tenant had an ongoing duty to identify and remove architectural
 11 barriers where it was readily achievable to do so, which deterred plaintiff LES JANKEY from
 12 returning to the subject public accommodation because of his knowledge and/or belief that
 13 neither some or all architectural barriers had been removed and that said premises remains
 14 inaccessible to persons with disabilities whether a wheelchair user or otherwise.

15 41. On information and belief, defendants have been negligent in their affirmative
 16 duty to identify the architectural barriers complained of herein and negligent in the removal of
 17 some or all of said barriers.

18 42. Because of defendants' violations, plaintiffs and other persons with physical
 19 disabilities are unable to use public facilities such as those owned and operated by defendants on
 20 a "full and equal" basis unless such facility is in compliance with the provisions of the
 21 Americans with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et*
 22 *seq.* and other accessibility law as plead herein. Plaintiffs seek an order from this court
 23 compelling defendants to make the RED JACK SALOON accessible to persons with disabilities.

24 43. On information and belief, defendants have intentionally undertaken to modify
 25 and alter existing building(s), and have failed to make them comply with accessibility
 26 requirements under the requirements of ADAAG and Title 24. The acts and omission of
 27 defendants, and each of them, in failing to provide the required accessible public facilities at
 28

1 the time of plaintiff's visit and injuries, indicate actual and implied malice toward plaintiffs, and
 2 despicable conduct carried out by defendants, and each of them, with a willful and conscious
 3 disregard for the rights and safety of plaintiffs and other similarly situated persons, and justify a
 4 trebling of damages as provided by Civil Code §§52(a) and 54.3, in order to profound example of
 5 defendants, and each of them, to other operators of other Saloons and other public facilities, and
 6 to punish defendants and to carry out the purposes of the Civil Code §§ 51, 51.5 and 54.

7 44. Plaintiffs are informed and believe and therefore allege that defendants NORMA
 8 PALADINI; and DOES 1-20, inclusive, and each of them, caused the subject building(s) which
 9 constitute the Saloon to be constructed, altered and maintained in such a manner that persons
 10 with physical disabilities were denied full and equal access to, within and throughout said
 11 building(s) of the RED JACK SALOON and were denied full and equal use of said public
 12 facilities. Furthermore, on information and belief, defendants have continued to maintain and
 13 operate said Saloon and/or its building(s) in such conditions up to the present time, despite actual
 14 and constructive notice to such defendants that the configuration of RED JACK SALOON
 15 and/or its building(s) is in violation of the civil rights of persons with physical disabilities, such
 16 as plaintiff LES JANKEY, the membership of plaintiff DREES and the disability community
 17 which DREES serves. Such construction, modification, ownership, operation, maintenance and
 18 practices of such public facilities are in violation of Civil Code §§51, 51.5 and 54, Health and
 19 Safety Code §19955, and the ADA, 42 U.S.C. §12101, *et seq.*

20 45. On personal knowledge, information and belief, the basis of defendants' actual
 21 and constructive notice that the physical configuration of the facilities including, but not limited
 22 to, architectural barriers constituting the RED JACK SALOON and/or building(s) was in
 23 violation of the civil rights of persons with physical disabilities, such as plaintiffs, includes, but
 24 is not limited to, communications with invitees and guests, plaintiff LES JANKEY himself,
 25 owners of other restaurants, hotels, motels and businesses, notices they obtained from
 26 governmental agencies upon modification, improvement, or substantial repair of the subject
 27 premises and other properties owned by these defendants, newspaper articles and trade
 28 publications regarding the Americans with Disabilities Act of 1990 and other access laws, public

1 service announcements by former U.S. Attorney General Janet Reno between 1993 and 2000,
 2 and other similar information. Defendants' failure, under state and federal law, to make the RED
 3 JACK SALOON accessible is further evidence of defendants' conscious disregard for the rights
 4 of plaintiff and other similarly situated persons with disabilities. Despite being informed of such
 5 effect on plaintiff and other persons with physical disabilities due to the lack of accessible
 6 facilities, defendants, and each of them, knowingly and willfully refused to take any steps to
 7 rectify the situation and to provide full and equal access for plaintiffs and other persons with
 8 physical disabilities to the Saloon. Said defendants, and each of them, have continued such
 9 practices, in conscious disregard for the rights of plaintiffs and other persons with physical
 10 disabilities, up to the date of filing of this complaint, and continuing thereon. Defendants had
 11 further actual knowledge of the architectural barriers referred to herein by virtue of the demand
 12 letter addressed to the defendants and served concurrently with the summons and complaint.
 13 Said conduct, with knowledge of the effect it was and is having on plaintiffs and other persons
 14 with physical disabilities, constitutes despicable conduct in conscious disregard of the rights and
 15 safety of plaintiffs and of other similarly situated persons, justifying the imposition of treble
 16 damages per Civil Code §§52 and 54.3.

17 46. Plaintiff LES JANKEY and plaintiff DREES, on behalf of its membership and the
 18 disability community which it serves, consisting of persons with disabilities, would, could and
 19 will return to the subject public accommodation when it is made accessible to persons with
 20 disabilities.

21 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
 22 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
 23 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**
 24 (On behalf of Plaintiffs LES JANKEY and DISABILITY RIGHTS ENFORCEMENT,
 25 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public
 26 benefit corporation and Against Defendants NORMA PALADINI; and DOES 1-20,
 27 inclusive)
 28 (42 U.S.C. §12101, *et seq.*)

26 47. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
 27 the allegations contained in paragraphs 1 through 46 of this complaint.

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1 48. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
2 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
3 protect:

4 some 43 million Americans with one or more physical or mental
5 disabilities; [that] historically society has tended to isolate and
6 segregate individuals with disabilities; [that] such forms of
7 discrimination against individuals with disabilities continue to be a
8 serious and pervasive social problem; [that] the nation's proper
9 goals regarding individuals with disabilities are to assure equality
10 of opportunity, full participation, independent living and economic
11 self-sufficiency for such individuals; [and that] the continuing
12 existence of unfair and unnecessary discrimination and prejudice
13 denies people with disabilities the opportunity to compete on an
14 equal basis and to pursue those opportunities for which our free
15 society is justifiably famous.

16 49. Congress stated as its purpose in passing the Americans with Disabilities Act of
17 1990 (42 U.S.C. §12102):

18 It is the purpose of this act (1) to provide a clear and
19 comprehensive national mandate for the elimination of
20 discrimination against individuals with disabilities; (2) to provide
21 clear, strong, consistent, enforceable standards addressing
22 discrimination against individuals with disabilities; (3) to ensure
23 that the Federal government plays a central role in enforcing the
24 standards established in this act on behalf of individuals with
25 disabilities; and (4) to invoke the sweep of Congressional
26 authority, including the power to enforce the 14th Amendment and
27 to regulate commerce, in order to address the major areas of
28 discrimination faced day to day by people with disabilities.

29 50. As part of the Americans with Disabilities Act of 1990, Public Law 101-336
30 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
31 Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public
32 accommodations identified for purposes of this title was:

33 (7) PUBLIC ACCOMMODATION - The following private
34 entities are considered public accommodations for purposes of this
35 title, if the operations of such entities affect commerce -

36 (B) a restaurant, bar or other establishment serving food or drink.

37 42 U.S.C. §12181(7)(B)

38 51. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated
against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,

1 privileges, advantages, or accommodations of any place of public accommodation by any person
 2 who owns, leases, or leases to, or operates a place of public accommodation”.

3 52. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
 4 42 U.S.C. §12182(b)(2)(a) are:

5 (i) the imposition or application of eligibility criteria
 6 that screen out or tend to screen out an individual with a disability
 7 or any class of individuals with disabilities from fully and equally
 8 enjoying any goods, services, facilities, privileges, advantages, or
 accommodations, unless such criteria can be shown to be necessary
 for the provision of the goods, services, facilities, privileges,
 advantages, or accommodations being offered;

9 (ii) a failure to make reasonable modifications in
 10 policies, practices, or procedures, when such modifications are
 necessary to afford such goods, services, facilities, privileges,
 11 advantages or accommodations to individuals with disabilities,
 unless the entity can demonstrate that making such modifications
 12 would fundamentally alter the nature of such goods, services,
 facilities, privileges, advantages, or accommodations;

13 (iii) a failure to take such steps as may be necessary to
 14 ensure that no individual with a disability is excluded, denied
 services, segregated or otherwise treated differently than other
 15 individuals because of the absence of auxiliary aids and services,
 unless the entity can demonstrate that taking such steps would
 16 fundamentally alter the nature of the good, service, facility,
 privilege, advantage, or accommodation being offered or would
 17 result in an undue burden;

18 (iv) a failure to remove architectural barriers, and
 communication barriers that are structural in nature, in existing
 19 facilities . . . where such removal is readily achievable; and

20 (v) where an entity can demonstrate that the removal of
 a barrier under clause (iv) is not readily achievable, a failure to
 21 make such goods, services, facilities, privileges, advantages or
 accommodations available through alternative methods if such
 22 methods are readily achievable.

23 The acts of defendants set forth herein were a violation of plaintiffs' rights under the ADA,
 24 Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.*
 25 Effective January 31, 1993, the standards of the ADA were also incorporated into California
 26 Civil Code §51, making available the damage remedies incorporated into Civil Code §51 and
 27 52(a) and 54.3.
 28

53. The removal of the barriers complained of by plaintiffs as hereinabove alleged was at all times after January 26, 1992 "readily achievable" as to the subject building(s) of RED JACK SALOON pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the removal of all the barriers complained of herein together was not "readily achievable," the removal of each individual barrier complained of herein was "readily achievable." On information and belief, defendants' failure to remove said barriers was likewise due to discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182 (b)(2)(A)(i) and (ii).

54. Per 42 U.S.C. §12181 (9), the term "readily achievable" means "easily accomplishable and able to be carried out without much difficulty or expense." The statute defines relative "expense" in part in relation to the total financial resources of the entities involved. Plaintiffs allege that properly repairing, modifying, or altering each of the items that plaintiffs complain of herein were and are "readily achievable" by the defendants under the standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was not "readily achievable" for defendants to remove each of such barriers, defendants have failed to make the required services available through alternative methods which were readily achievable.

55. On information and belief, construction work on, and modifications of, the subject building(s) of RED JACK SALOON occurred after the compliance date for the Americans with Disabilities Act, January 26, 1992, independently triggering access requirements under Title III of the ADA.

56. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et seq.*, plaintiffs are entitled to the remedies and procedures set forth in §204(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiffs are being subjected to discrimination on the basis of disability in violation of this title or have reasonable grounds for believing that plaintiffs are about to be subjected to discrimination in violation of §302. Plaintiffs are deterred from returning to or making use of the public facilities complained of herein so long as the premises and defendants' policies bar full and equal use by persons with physical disabilities.

57. 42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions". Pursuant to this section, plaintiff LES JANKEY has not returned to defendants' premises since on or about March 21, 2008, but on information and belief, alleges that defendants have continued to violate the law and deny the rights of plaintiffs and of other persons with physical disabilities to access this public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title".

58. Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement the Americans with Disabilities Act of 1990, including but not limited to an order granting injunctive relief and attorneys' fees. Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.
 (On Behalf of Plaintiffs LES JANKEY and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants NORMA PALADINI; and DOES 1-20, inclusive)
 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

59. Plaintiffs replead and incorporate by reference as if fully set forth again herein, the allegations contained in paragraphs 1 through 58 of this complaint.

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60. At all times relevant to this action, California Civil Code §54 has provided that persons with physical disabilities are not to be discriminated against because of physical handicap or disability. This section provides that:

(a) Individuals with disabilities . . . have the same rights as the general public to full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, and other public places.

61. California Civil Code §54.1 provides that persons with disabilities shall not be denied full and equal access to places of public accommodation or facilities:

(a)(1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

Civil Code §54.1(a)(1)

62. California Civil Code §54.1 further provides that a violation of the Americans with Disabilities Act of 1990 constitutes a violation of section 54.1:

(d) A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section, and nothing in this section shall be construed to limit the access of any person in violation of that act.

Civil Code §54.1(d)

63. Plaintiff LES JANKEY and the membership of plaintiff DREES are persons within the meaning of Civil Code §54.1 whose rights have been infringed upon and violated by the defendants, and each of them, as prescribed by Civil Code §§54 and 54.1. Each specific architectural barrier which defendants knowingly and willfully fail and refuse to remove constitutes a separate act in violation of Civil Code §§54 and 54.1. Plaintiffs have been and continue to be denied full and equal access to defendants' RED JACK SALOON. As a legal

1 result, plaintiffs are entitled to seek damages pursuant to a court or jury determination in
 2 accordance with California Civil Code §54.3(a) for each day on which they visited or have been
 3 deterred from visiting the Saloon because of their knowledge and belief that the RED JACK
 4 SALOON is inaccessible to persons with disabilities. California Civil Code §54.3(a) provides:

5 Any person or persons, firm or corporation, who denies or
 6 interferes with admittance to or enjoyment of the public facilities
 7 as specified in Sections 54 and 54.1 or otherwise interferes with
 8 the rights of an individual with a disability under Sections 54, 54.1
 9 and 54.2 is liable for each offense for the actual damages and any
 10 amount as may be determined by a jury, or the court sitting without
 a jury, up to a maximum of three times the amount of actual
 damages but in no case less than . . . one thousand dollars (\$1,000)
 and . . . attorney's fees as may be determined by the court in
 addition thereto, suffered by any person denied any of the rights
 provided in Sections 54, 54.1 and 54.2.

11 Civil Code §54.3(a)

12 64. On or about October 27, 2007, October 28, 2007, February 9, 2008, February 10,
 13 2008 and March 21, 2008, plaintiff LES JANKEY suffered violations of Civil Code §§54 and
 14 54.1 in that plaintiff LES JANKEY was denied access to entrance, path of travel to the restrooms
 15 and patio, men's restroom, women's and other public facilities as stated herein at the RED JACK
 16 SALOON and on the basis that plaintiff LES JANKEY was a person with physical disabilities.

17 65. As a result of the denial of equal access to defendants' facilities due to the acts
 18 and omissions of defendants, and each of them, in owning, operating and maintaining these
 19 subject public facilities, plaintiffs suffered violations of plaintiffs' civil rights, including but not
 20 limited to rights under Civil Code §§54, 54.1 and 54.3, and plaintiff LES JANKEY suffered
 21 physical discomfort and bodily injury on March 21, 2008, including, but not limited to, fatigue,
 22 stress, strain and pain in wheeling and attempting to and/or transferring up, on, down, to, over,
 23 around and through architectural barriers. Specifically, as a legal result of defendants negligence
 24 in the design, construction and maintenance of the existing step, plaintiff LES JANKEY suffered
 25 injury to his back and buttocks while being dropped and jostled in his wheelchair which was
 26 rolled off the step.

27 66. Further, plaintiff LES JANKEY suffered mental distress, mental suffering, mental
 28 anguish, which includes shame, humiliation, embarrassment, frustration, anger, disappointment

1 and worry, all of which are expectedly and naturally associated with a denial of access to a
2 person with physical disabilities, all to plaintiff's damages as hereinafter stated. Defendants'
3 actions and omissions to act constituted discrimination against plaintiff on the sole basis that
4 plaintiffs are persons or an entity that represents persons with physical disabilities and unable,
5 because of the architectural barriers created and maintained by the defendants in violation of the
6 subject laws, to use the public facilities hereinabove described on a full and equal basis as other
7 persons.

8 67. Plaintiffs have been damaged by defendants', and each of their, wrongful conduct
9 and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 and 55 for violation of
10 plaintiffs' rights as persons or an entity that represents persons with physical disabilities on or
11 about October 27, 2007, October 28, 2007, February 9, 2008, February 10, 2008 and March 21,
12 2008, and on a continuing basis since then, including statutory damages, a trebling of all of actual
13 damages, general and special damages available pursuant to §54.3 of the Civil Code according to
14 proof.

15 68. As a result of defendants', and each of their, acts and omissions in this regard,
16 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
17 plaintiffs' rights and enforce the provisions of the law protecting access for persons with physical
18 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to
19 the provisions of Civil Code §54.3 and §55, plaintiffs therefore will seek recovery in this lawsuit
20 for all reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally,
21 plaintiffs' lawsuit is intended not only to obtain compensation for damages to plaintiffs, but also
22 to compel the defendants to make their facilities accessible to all members of the public with
23 disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to
24 the provisions of §1021.5 of the Code of Civil Procedure.

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Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET. SEQ.
 (On Behalf of Plaintiffs LES JANKEY and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation and Against Defendants NORMA PALADINI; and DOES 1-20, inclusive)
 (Health & Safety Code §19955, et seq.)

69. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 68 of this complaint.

70. Health & Safety Code §19955 provides in pertinent part:

The purpose of this part is to insure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code. For the purposes of this part "public accommodation or facilities" means a building, structure, facility, complex, or improved area which is used by the general public and shall include auditoriums, hospitals, theaters, restaurants, hotels, motels, stadiums, and convention centers. When sanitary facilities are made available for the public, clients or employees in such accommodations or facilities, they shall be made available for the handicapped.

71. Health & Safety Code §19956, which appears in the same chapter as §19955, provides in pertinent part, "accommodations constructed in this state shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code" Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all public accommodations constructed or altered after that date. On information and belief, portions of the RED JACK SALOON and/or of the building(s) were constructed and/or altered after July 1, 1970, and substantial portions of the Saloon and/or the building(s) had alterations, structural repairs, and/or additions made to such public accommodations after July 1, 1970, thereby requiring said Saloon and/or building to be subject to the requirements of Part 5.5, §19955, *et seq.*, of the Health & Safety Code upon such alteration, structural repairs or additions per Health & Safety Code §19959.

72. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the State Architect promulgated regulations for the enforcement of these provisions. Effective July 1, 1982, Title 24 of the California Building Standards Code adopted the California State Architect's

1 Regulations and these regulations must be complied with as to any alterations and/or
2 modifications of the RED JACK SALOON and/or the building(s) occurring after that date.
3 Construction changes occurring prior to this date but after July 1, 1970 triggered access
4 requirements pursuant to the "ASA" requirements, the American Standards Association
5 Specifications, A117.1-1961. On information and belief, at the time of the construction and
6 modification of said building, all buildings and facilities covered were required to conform to
7 each of the standards and specifications described in the American Standards Association
8 Specifications and/or those contained in Title 24 of the California Building Standards Code.

9 73. Saloons such as the RED JACK SALOON are "public accommodations or
10 facilities" within the meaning of Health & Safety Code §19955, *et seq.*

11 74. As a result of the actions and failure to act of defendants, and as a result of the
12 failure to provide proper and legally handicapped-accessible public facilities, plaintiffs were
13 denied plaintiffs' rights to full and equal access to public facilities and suffered a loss of
14 plaintiffs' civil rights and plaintiffs' rights as persons with physical disabilities to full and equal
15 access to public facilities.

16 75. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,
17 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
18 plaintiffs' civil rights and enforce provisions of the law protecting access for the persons with
19 physical disabilities and prohibiting discrimination against the persons with physical disabilities,
20 and to take such action both in plaintiffs' own interests and in order to enforce an important right
21 affecting the public interest. Plaintiffs, therefore, seek in this lawsuit the recovery of all
22 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure
23 §1021.5. Plaintiffs additionally seek attorneys' fees pursuant to Civil Code §§54.3 and 55.
24 Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

25 76. Plaintiffs seek injunctive relief for an order compelling defendants, and each of
26 them, to make the subject place of public accommodation readily accessible to and usable by
27 persons with disabilities.
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Wherefore, plaintiffs pray for damages and relief as hereinafter stated.

IV. **FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

(On Behalf of Plaintiffs LES JANKEY and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants NORMA PALADINI; and DOES 1-20, inclusive)
(Civil Code §51, 51.5)

77. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 76 of this complaint.

78. Defendants' actions and omissions and failure to act as a reasonable and prudent public accommodation in identifying, removing and/or creating architectural barriers, policies, practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The Unruh Act provides:

This section shall be known, and may be cited, as the Unruh Civil Rights Act.

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or disability are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, or disability.

Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure . . . nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other . . . laws.

A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.

As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the "intent" of the defendants in not complying with barrier removal is not an issue. Hence, the

1 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or
 2 failing to act to identify and remove barriers can be construed as a "negligent per se" act of
 3 defendants, and each of them.

4 79. The acts and omissions of defendants stated herein are discriminatory in nature
 5 and in violation of Civil Code §51.5:

6 No business establishment of any kind whatsoever shall
 7 discriminate against, boycott or blacklist, refuse to buy from, sell
 8 to, or trade with any person in this state because of the race, creed,
 9 religion, color, national origin, sex, or **disability** of the person or of
 the person's partners, members, stockholders, directors, officers,
 managers, superintendents, agents, employees, business associates,
 suppliers, or customers.

10 As used in this section, "person" includes any person, firm
 11 association, organization, partnership, business trust, corporation,
 limited liability company, or company.

12 Nothing in this section shall be construed to require any
 13 construction, alteration, repair, structural or otherwise, or
 14 modification of any sort whatsoever, beyond that construction,
 15 alteration, repair or modification that is otherwise required by other
 16 provisions of law, to any new or existing establishment, facility,
 building, improvement, or any other structure . . . nor shall
 17 anything in this section be construed to augment, restrict or alter in
 any way the authority of the State Architect to require construction,
 alteration, repair, or modifications that the State Architect
 otherwise possesses pursuant to other laws.

18 80. Defendants' acts and omissions as specified have denied to plaintiffs full and
 19 equal accommodations, advantages, facilities, privileges and services in a business establishment,
 20 on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil
 21 Rights Act. Furthermore, pursuant to the 1992 amendment to California Civil Code §51, "A
 22 violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public
 23 Law 101-336) shall also constitute a violation of this section". Plaintiffs accordingly incorporate
 24 the entirety of their above cause of action for violation of the Americans with Disabilities Act at
 ¶¶47, *et seq.*, as if repled herein.

25 81. As a legal result of the violation of plaintiff LES JANKEY's civil rights as
 26 hereinabove described, plaintiff LES JANKEY has suffered general damages and bodily injury.
 27 Plaintiff suffered bodily injury on March 21, 2008, including, but not limited to, fatigue, stress,
 28

1 strain and pain in wheeling and attempting to and/or transferring up, on, down, to, over, around
2 and through architectural barriers. Specifically, as a legal result of defendants negligence in the
3 design, construction and maintenance of the existing step, plaintiff LES JANKEY suffered injury
4 to his back and buttocks while being dropped and jostled in his wheelchair which was rolled off
5 the step.

6 82. Further, plaintiff LES JANKEY suffered physical injury, emotional distress (all to
7 plaintiff's damage according to proof, and incurred reasonable attorneys' fees and costs).
8 Plaintiffs LES JANKEY and DREES are entitled to the rights and remedies of §52(a) of the Civil
9 Code, including trebling of actual damages (defined by §52(h) of the Civil Code to mean "special
10 and general damages"), as well as to reasonable attorneys' fees and costs, as is allowed by
11 statute, according to proof if deemed to be the prevailing party.

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1 PRAYER:

2 Plaintiffs pray that this court award damages and provide relief as follows:

3 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**
 4 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
 5 **DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)**
 6 (On Behalf of Plaintiffs LES JANKEY and DISABILITY RIGHTS ENFORCEMENT,
 7 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public
 8 benefit corporation, and Against Defendants NORMA PALADINI; and DOES 1-20,
 9 inclusive)
 10 (42 U.S.C. §12101, *et seq.*)

11 1. For injunctive relief, compelling defendants NORMA PALADINI; and DOES 1-
 12 20, inclusive, to make the RED JACK SALOON, located at 131 Bay Street, San Francisco,
 13 California, readily accessible to and usable by individuals with disabilities, per 42 U.S.C §12181,
 14 *et seq.*, and to make reasonable modifications in policies, practice, eligibility criteria and
 15 procedures so as to afford full access to the goods, services, facilities, privileges, advantages and
 16 accommodations being offered.

17 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiffs are deemed
 18 the prevailing party; and

19 3. For such other and further relief as the court may deem proper.

20 **II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**
 21 **EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1**
 22 **AND 54.3, *ET SEQ.***
 23 (On Behalf of Plaintiffs LES JANKEY and DISABILITY RIGHTS ENFORCEMENT,
 24 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public
 25 benefit corporation, and Against Defendants NORMA PALADINI; and DOES 1-20,
 26 inclusive)
 27 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

28 1. For injunctive relief, compelling defendants NORMA PALADINI; and DOES 1-
 20, inclusive, to make the RED JACK SALOON, located at 131 Bay Street, San Francisco,
 California, readily accessible to and usable by individuals with disabilities, per state law.

2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for
 each occasion on which plaintiffs were deterred from returning to the subject public
 accommodation.

3. Attorneys' fees pursuant to Civil Code §54.3 and §55 and Code of Civil
 Procedure §1021.5, if plaintiffs are deemed the prevailing party;

1 4. Treble damages pursuant to Civil Code §54.3;

2 5. For all costs of suit;

3 6. Prejudgment interest pursuant to Civil Code §3291;

4 7. Such other and further relief as the court may deem just and proper.

5 **III. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**
 6 **EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1**
 7 **AND 54.3, ET SEQ.**

8 (On Behalf of Plaintiff LES JANKEY, and Against Defendants NORMA PALADINI;
 9 and DOES 1-20, inclusive)
 10 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

11 1. General and compensatory damages according to proof.

12 **IV. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE**
 13 **SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE**
 14 **§19955, ET SEQ.**

15 (On Behalf of Plaintiffs LES JANKEY and DISABILITY RIGHTS ENFORCEMENT,
 16 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public
 17 benefit corporation, and Against Defendants NORMA PALADINI; and DOES 1-20,
 18 inclusive)
 19 (Health & Safety code §19955, *et seq.*)

20 1. For injunctive relief, compelling defendants NORMA PALADINI; and DOES 1-
 21 20, inclusive, to make the RED JACK SALOON, located at 131 Bay Street, San Francisco,
 22 California, readily accessible to and usable by individuals with disabilities, per state law.

23 2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, and/or Civil
 24 Code §55, if plaintiffs are deemed the prevailing party;

25 3. For all costs of suit;

26 4. For prejudgment interest pursuant to Civil Code §3291;

27 5. Such other and further relief as the court may deem just and proper.

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1 V. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO
 2 FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,
 3 PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL
 4 CODE §51, *ET SEQ.* (THE UNRUH CIVIL RIGHTS ACT)
 5 (On Behalf of Plaintiffs LES JANKEY and DISABILITY RIGHTS ENFORCEMENT,
 6 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public
 7 benefit corporation and Against Defendants NORMA PALADINI; and DOES 1-20,
 8 inclusive)
 9 (California Civil Code §§51, 51.5, *et seq.*)

10 1. All statutory damages as afforded by Civil Code §52(a) for the date of incident
 11 and for each occasion on which plaintiffs were deterred from returning to the subject public
 12 accommodation;

13 2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the
 14 prevailing party;

15 3. Treble damages pursuant to Civil Code §52(a);

16 4. For all costs of suit;

17 5. Prejudgment interest pursuant to Civil Code §3291; and

18 6. Such other and further relief as the court may deem just and proper.

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1 VI. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO
2 FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,
3 PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL
4 CODE §51, *ET SEQ.* (THE UNRUH CIVIL RIGHTS ACT)
(On Behalf of Plaintiff LES JANKEY, and Against Defendants NORMA PALADINI;
and DOES 1-20, inclusive)
(California Civil Code §§51, 51.5, *et seq.*)

5
6 1. General and compensatory damages to plaintiff LES JANKEY according to proof.

7 Dated: 3/26/08, 2008

THOMAS E. FRANKOVICH
A PROFESSIONAL LAW CORPORATION

8
9 By: 

10 THOMAS E. FRANKOVICH
11 Attorneys for Plaintiffs LES JANKEY and DISABILITY
12 RIGHTS ENFORCEMENT, EDUCATION, SERVICES:
13 HELPING YOU HELP OTHERS, a California public
14 benefit corporation

15 DEMAND FOR JURY TRIAL

16 Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

17 Dated: 3/26/08, 2008

THOMAS E. FRANKOVICH
A PROFESSIONAL LAW CORPORATION

18
19 By: 

20 THOMAS E. FRANKOVICH
21 Attorneys for Plaintiffs LES JANKEY and
22 DISABILITY RIGHTS, ENFORCEMENT, EDUCATION
23 SERVICES: HELPING YOU HELP OTHERS, a California
24 public benefit corporation
25
26
27
28

EXHIBIT A

Les Jankey
6662 W. 86th Place
Los Angeles, CA 90045-3750

December 19, 2007

Manager
Red Jack Salon
131 Bay St.
San Francisco, CA 94133

Dear Manager of Red Jack Salon:

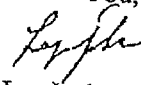
Back on Halloween of this year, my friend Craig Yates and I tried to get into Red Jack Salon. Couldn't get in. We came back the next night, the night the Red Sox won. We couldn't get in without being picked up in our wheelchairs. So, we both stayed outside on the sidewalk. I appreciated being comp'd on the drinks but Craig couldn't get in. He was in the heavy power chair. Anyway, I think you could ramp into the bar. Many places in San Francisco have done this. I come to San Francisco quite a bit and I'd like to be able to get into Red Jack with Craig.

I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. I'd like to come back to Red Jack Salon once it's accessible to me. I may still come back before you do the work just because I like the place. If there is some problem doing this please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

I found out who might be able to help you. If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you. You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your accountant already has this information or knows about it.

Thank you for considering my request.

Thank You,

Les Jankey

Les Jankey
6662 W. 86th Place
Los Angeles, CA 90045-3750

December 19, 2007

Owner of Building
Red Jack Salon
131 Bay St.
San Francisco, CA 94133

Dear Owner of Building for Red Jack Salon:

Back on Halloween of this year, my friend Craig Yates and I tried to get into Red Jack Salon. Couldn't get in. We came back the next night, the night the Red Sox won. We couldn't get in without being picked up in our wheelchairs. So, we both stayed outside on the sidewalk. I appreciated being comp'd on the drinks but Craig couldn't get in. He was in the heavy power chair. Anyway, I think you could ramp into the bar. Many places in San Francisco have done this. I come to San Francisco quite a bit and I'd like to be able to get into Red Jack with Craig.

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Thank you for considering my request.

Thank You,

Les Jankey
Les Jankey

Les Jankey
6662 W. 86th Place
Los Angeles, CA 90045-3750

February 5, 2008

Manager
Red Jack Saloon
131 Bay St.
San Francisco, CA 94133

Dear Manager of Red Jack Saloon:

I was staying a couple of days at the Hyatt on Fisherman's Wharf and decided to come to Red's. I was there back in October/November of last year and couldn't get in because of the step. People offered to help and I got my drinks comp. But the problem is still getting in and the restroom. I wrote you a while back and hoped you'd get the info you need and work on the place. Maybe you are, maybe you are not. What's up? Could I hear from you sooner than later?

Thank You,


Les Jankey

Les Jankey
6662 W. 86th Place
Los Angeles, CA 90045-3750

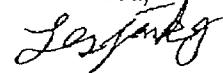
February 5, 2008

Owner of Building
Red Jack Saloon
131 Bay St.
San Francisco, CA 94133

Dear Owner of Building for Red Jack Saloon:

I was staying a couple of days at the Hyatt on Fisherman's Wharf and decided to come to Red's. I was there back in October/November of last year and couldn't get in because of the step. People offered to help and I got my drinks comp. But the problem is still getting in and the restroom. I wrote you a while back and hoped you'd get the info you need and work on the place. Maybe you are, maybe you are not. What's up? Could I hear from you sooner than later?

Thank You,



Les Jankey

EXHIBIT B

1 IRENE K. YESOWITCH State Bar #111575
JOHN S. HONG State Bar #255150
2 LONG & LEVIT LLP
465 California Street, Suite 500
3 San Francisco, CA 94104
TEL: (415) 397-2222 FAX: (415) 397-6392

4 Attorneys for Defendants
5 BAY STREET CORPORATION dba RED JACK
SALOON (sued erroneously herein as Red Jack
6 Saloon);
NORMA PALADINI

7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
10

11 LES JANKEY and DISABILITY RIGHTS
ENFORCEMENT, EDUCATION,
12 SERVICES: HELPING YOU HELP
OTHERS,

13 Plaintiffs,

14 vs.

15 RED JACK SALOON; NORMA
16 PALADINI; and DOES 1-20, inclusive,

17 Defendants.
18

CASE No. CGC-08-474253

ANSWER TO UNVERIFIED COMPLAINT

Action Filed: April 14, 2008

19 Defendants BAY STREET CORPORATION dba RED JACK SALOON (sued
20 erroneously herein as Red Jack Saloon) and Norma Paladini (collectively "RED JACK
21 SALOON"), in answer to the unverified complaint of Plaintiffs LES JANKEY ("JANKEY") and
22 DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP
23 OTHERS ("DREES") (collectively "Plaintiffs") on file herein (the "Complaint"), allege, respond
24 and aver as follows:

25 **GENERAL DENIAL**

26
27 1. Pursuant to the provisions of California Code of Civil Procedure § 431.30(d),
28 Defendants deny each and every purported cause of action in the Complaint, and further deny that

1 the Complaint and each and every purported cause of action therein state facts sufficient to
2 constitute a cause of action against the answering Defendants.

3 2. Defendants further deny that PLAINTIFFS have sustained or will sustain any
4 injury, damage, or loss in the sum or sums alleged, or in any sum at all, by reason of any act,
5 omission, breach on the part of the answering defendants or their agents. Defendants further deny
6 that Plaintiffs have sustained injury, damage, or loss, if any, by reason of any act, or omission to
7 act, on the part of these answering defendants.

8 **FIRST AFFIRMATIVE DEFENSE**

9 1. With "unclean hands" and such actions are directly related to the claims by
10 Plaintiffs in the Complaint and preclude Plaintiffs from pursuing the claims in the Complaint.
11 Therefore, Plaintiffs are barred from seeking relief by the Doctrine of Unclean Hands.

12 **SECOND AFFIRMATIVE DEFENSE**

13 2. To the extent the Plaintiffs sustained any injury or damage as alleged in the
14 Complaint, which is denied, said injury or damage was directly and proximately caused or
15 contributed to by the actions of Plaintiffs, or others, whose fault may attributable to each
16 respectively, and accordingly, and recovery against Defendants must be reduced proportionately
17 or abated entirely pursuant to law.

18 **THIRD AFFIRMATIVE DEFENSE**

19 3. The Complaint, and each purported cause of action, is barred by reason of
20 Defendants' compliance with federal, state and local laws, rules, regulations and guidelines with
21 respect to ownership and operation of the subject premises.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 4. Defendants allege that due to the age, construction, architectural and structural
24 features of the subject premises, removal of the barriers alleged in the Complaint is not readily
25 achievable pursuant to the definition of 42 U.S.C. § 12181, nor able to be carried out without
26 much difficulty or expense.

27 ///

28 ///

FIFTH AFFIRMATIVE DEFENSE

1
2 5. Defendants allege that any conduct complained of by Plaintiffs was not based on
3 anyone's disability.

SIXTH AFFIRMATIVE DEFENSE

4
5 6. Defendants allege that the Complaint and each and every cause of action and/or
6 claim alleged therein is barred by the Doctrines of Waiver and Estoppel.

SEVENTH AFFIRMATIVE DEFENSE

7
8 7. The subject facility has not undergone new construction or alteration since the
9 enactment of the ADA and therefore is not subject to the ADA's standards for newly constructed
10 facilities.

EIGHTH AFFIRMATIVE DEFENSE

11
12 8. Defendants have removed all structural barriers in the subject premises where such
13 removal was readily achievable.

NINTH AFFIRMATIVE DEFENSE

14
15 9. The subject premises has not undergone new construction or alteration since
16 enactment of Health & Safety Code § 19955, et seq. Any structural repairs made since the
17 enactment have been in compliance with Health & Safety Code § 19955, et seq. None of the
18 structural repairs affected the areas at issue in Plaintiffs' Complaint.

TENTH AFFIRMATIVE DEFENSE

19
20 10. The equities in this case weigh against the relief Plaintiffs seek, as Plaintiffs' have
21 "unclean hands." Plaintiffs bring serial "copycat" actions for minor alleged violations. As a
22 result of Plaintiffs' and Plaintiff's counsel's past litigation tactics, Plaintiffs' counsel is subject to
23 a pre-filing order in the Central District of California.

ELEVENTH AFFIRMATIVE DEFENSE

24
25 11. The Complaint and each cause of action set forth therein is barred in whole or in
26 part because Plaintiffs suffered no damages as a consequence of any of the alleged acts or
27 omissions of Defendants.

28 ///

TWELFTH AFFIRMATIVE DEFENSE

12. The Complaint and each cause of action set forth therein is barred by the applicable statute of limitations including, but expressly not limited to, California Code of Civil Procedure sections 335.1, 338, 340 and 340(3).

THIRTEENTH AFFIRMATIVE DEFENSE

13. Defendants hereby give notice that they intend to rely upon any additional affirmative defenses which become available or apparent during discovery, and thus reserve the right to amend their answer to assert such additional defenses.

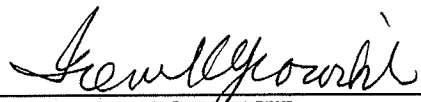
PRAYER

WHEREFORE, Defendants pray that Plaintiffs' Complaint be dismissed with prejudice and that Defendants be awarded its attorneys' fees and costs and such other relief as this Court deems equitable and just.

Dated: June 16, 2008

LONG & LEVIT LLP

By


IRENE K. YESOWITCH
Attorneys for Defendants
BAY STREET CORPORATION dba
RED JACK SALOON (sued
erroneously herein as Red Jack Saloon)
and NORMA PALADINI

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PROOF OF SERVICE

I am employed in the City and County of San Francisco, California. I am over the age of 18 years and not a party to the within action. My business address is Long & Levit LLP, 465 California Street, Suite 500, San Francisco, CA 94104.

On June 16, 2008, I served the documents named below on the following attorney(s) of record and/or interested parties in the case of *Les Jankey, et al. v. Red Jack Saloon, et al.*, Superior Court of California, County of San Francisco, Case No. CGC-08-474253.

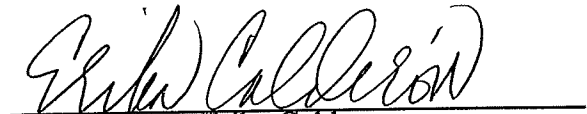
ANSWER TO UNVERIFIED COMPLAINT**SERVED UPON:**

Thomas E. Frankvich, Esq.
 Thomas E. Frankovich
 A Professional Law Corporation
 2806 Van Ness Avenue
 San Francisco, CA 94109
 Tel: (415) 674-8600
 Fax: (415) 674-9900

Attorneys for Plaintiffs:
Les Jankey, an individual; and Disability
Rights Enforcement, Education, Services:
Helping You Help Others

☒ (BY MAIL) I am readily familiar with Long & Levit LLP's practice for collection and processing of documents for mailing with the United States Postal Service. I caused such document(s) to be placed in a sealed envelope, addressed to the person(s) on whom it is to be delivered pursuant to the attached service list, with postage thereon fully prepaid, to be deposited with the United States mail at San Francisco, California, that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 16, 2008, at San Francisco, California.


 Erika Calderon

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